

CONDITIONAL PETITION FOR EXTENSION OF TIME

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ADDITIONAL FEE

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REMARKS

Reconsideration of the Application by the Examiner is respectfully requested.

In the Amendment filed June 16, 2003, Applicant amended the then-pending claims in order to cancel all of the rejected claims and to accept all of the objected-to claims. On pages 45 and 46 of that Amendment, Applicant set forth the correspondence between the amended claims to be examined and the previously-examined claims. Upon review of that Amendment, it was realized that two word-processing errors were made.

The phrase "of a product or service" after "for each purchase transaction" was inserted in some claims but inadvertently was not inserted in others. Specifically, the phrase was not inserted in the preamble in rewritten claims 166, 167, 172, 173, 178, 179, 184, 185, 190, 191, 196, 197, 202, and 203.

Additionally, because of the combining of claim language to incorporate the limitations of base claims into objected-to claims, the phrase "a product or service" [underlining added] was recited in two portions of some of the re-written claims – in the preamble and in clause (c). It was intended that the second such "a product or service" be changed to "the product or service", but this was not done. The affected claims are 32, 45, 167, 173, 179, 185, 191, 197, 203, 216, 218, 220, 222, 224, 226, and 228.

The Amendment herein inserts "of a product or service", and changes "a" to "the", in those places described above.

Applicant believes that these changes have no effect whatsoever on the scope of the claims, inasmuch as they originated solely from the rewriting of objected-to claims. Nevertheless, Applicant is submitting these changes in order to make the wording of all claims as consistent as possible, both with each other and with what was intended to be done in the June 16, 2003 Amendment. These changes are not being made to overcome any prior art reference or to overcome a rejection under 35 USC § 112.

The Examiner has rejected claims 31-101 and 166-228 under 35 USC § 103(a) as allegedly being unpatentable over Fraser et al in view of Clearwater. Applicant respectfully traverses this rejection made by the Examiner and submits that the claims recite subject matter that distinguishes over these prior art references under 35 USC § 103(a).

The Fraser et al patent teaches a method of employing a communications system to mediate transactions among parties reachable by the communications system (Col. 4, ll. 45-49). A communications system which can implement the Fraser et al system may be a telephone system, a data network in which a network node can initiate a session, and a video system in which there are interactions between the network and the user (Col. 5, ll. 49-60). However, the communication system must be able to actively connect a sender of a message with a recipient of a message (Col. 14, ll. 29-32), and establish message paths (see explanation below), not simply passively forward data to a location in the system (Col. 5, ll. 49-52).

With respect to a communications system doing credit card billing for a purchase, the Fraser et al system is modeled after the conventional telephonic credit card system (Col. 8, ll. 11-22), but with the credit card information of the customer hidden (Col. 8, ll. 24-31).

In the Fraser et al system, to begin a transaction, customer C 403 employs communications system 303 to call vendor 405. The number used to call vendor 405 serves both to identify a kind of transaction and the vendor, and so functions both as a transaction identifier 409 and a vendor identifier 410. Importantly, switch 107 receives transaction identifier 409, it responds by activating transaction manager 407 and providing vendor ID 410 to it. Transaction manager 407 retains vendor ID 410 and causes switch 107 to set up message path 421 between switch 107 and customer 403 and to provide a digital voice message to customer 403 in which customer 403 is asked for his credit card number.

Thereafter, customer 403 inputs credit card number 407 using the Touch-Tone buttons on his telephone. Switch 107 receives the touch tone signals produced when the buttons are pushed, converts them to digital data, and provides the number to transaction manager 407. Transaction manager 407 retains the credit card number and causes switch 107 to set up message path 423 and connect the customer with the vendor via message paths 421 and 423. The customer and the vendor then discuss the transaction and come to an agreement on the price. Vendor 405 then uses the Touch-Tone buttons on his telephone to input the price (P 413). When switch 107 receives the touch tone signals, it provides them to transaction manager 407, which in turn provides vendor identifier 410, credit card number 407, and price 413 to credit manager 415 (Col. 8, ll. 30-58).

Thus, in the Fraser et al system, the vendor initiates the request to bill the credit card of the customer (Col. 8, ll. 53-55 and Fig. 4).

The present invention differs substantially from Fraser et al, including in at least two fundamental respects:

(1) in the present invention, the buyer and seller communicate over the Internet, a communications system which Applicant believes does not have the ability to allow the active creation of message paths firstly between the customer and the third party, then between the customer and the vendor, and finally between the vendor and the third party, all based upon a single communication initiated by the customer, as is required in the Fraser et al system (see citations above); and,

(2) all of the independent claims in the present application (31, 32, 44, 45, 166, 167, 172, 173, 178, 179, 184, 185, 190, 191, 196, 197, 202, 203, 215-228) require that the customer, not the vendor, initiate the authorization to charge for the purchase, while Fraser et al requires that the vendor initiate the authorization to charge (see citations above).

Fraser suggests an auction at column 14, lines 14-28 wherein a customer can make bids. However, Fraser does not suggest that the customer initiate authorization to charge in this embodiment either.

Clearwater teaches an air-conditioning resource control system for determining an allocation of air-conditioning resources. The system is described in terms analogous to an auction, although the system of Clearwater is not an auction inasmuch as the resources are not transferred from a selling participant to a buying participant (Col. 8, ll. 53-57). The system of Clearwater is more accurately described as one in which the system controller (e.g., a building's owner) simultaneously sells air-conditioning to, and buys air-conditioning from, the participants (i.e., the offices) in the building, while typically keeping the total volume of air-conditioning constant (Col. 5, ll. 19-21).

As applied to the allocation of cooling, for example, each office has a thermostat, the setting of which indicates whether more or less cooling is desired at that moment. If more

cooling is desired, that is referred to as a "buy bid", and if less cooling is desired, that is referred to as a "sell bid" (Col. 4, ll. 28-41). All of the bids are input into the system controller which establishes an "auction price" as the intersection of two Price vs. Quantity curves which are generated for both the buy bids (Fig. 5, item 60) and the sell bids (Fig. 5, item 62), based upon the individual offices' price/quantity data point inputs (Col. 6, ll. 11-19). (Clearwater is completely silent as to both how the price/quantity data point for each participant is determined, and how that information is input into the system controller.) Thus, although it is the individual offices which bid to either buy or sell resources, it is the system controller which determines the auction price (Col. 6, ll. 3-20), and based thereon, determines which offices become buyers from the system controller, and which offices become sellers to the system controller (Col. 6, ll. 20-25).

Once the system controller has decided who is a buyer and who is a seller, the system controller delivers or restricts resources (Col. 6, l. 48 – Col. 7, l. 5), and debits and credits the offices (Col. 7, ll. 30-51), accordingly.

The only teaching for which the Examiner cites Clearwater is that it discloses, "an auction-based control system where the buyer pays an amount of money via credit or debit". The Examiner also states that, "the amount for a particular bid must come from the bidder", and that, "it would have been obvious to integrate the aforementioned feature of Clearwater into Fraser whereby customers could make bids using real money".

However, the present invention as claimed is not a method of conducting an auction, and bidding is not an element of the claims. Inasmuch as bidding is not an element of the claims, how bids might be made is irrelevant. The present invention as claimed is a billing method, one element of which relates to authorization to make payment for an already agreed-upon sale.

Thus, it is not a bid by a potential buyer that matters, it is the actual purchase price that matters. Clearwater teaches that it is the system controller which determines the actual purchase price (i.e., the auction price) at which it sells resources to the buyer (Col. 6, ll. 3-20).

All of the independent claims in the present application require that the buyer initiate the authorization to charge the purchase price to the buyer. As explained above, and as conceded by the Examiner at page 3 of the Office Action, Fraser et al requires that the vendor, not the buyer, initiate the authorization to charge the purchase price to the buyer. Clearwater teaches that it is the system controller, not the buyer, which initiates the authorization to charge the purchase price to the buyer (Col. 7, ll. 30-51).

Accordingly, because neither Fraser nor Clearwater teaches that the buyer initiate the authorization to charge, applicant respectfully submits that even if it were obvious, “to integrate the aforementioned feature of Clearwater into Fraser”, as hypothesized by the Examiner, the invention as claimed, which requires, *inter alia*, that the buyer initiate authorization to charge, would not be obtained thereby.

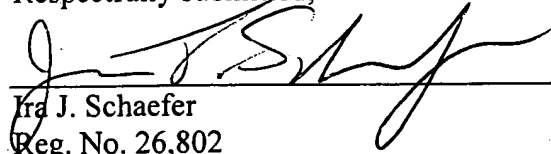
For the reasons set forth hereinabove, applicant respectfully submits that the presented claims patentably distinguish over the Fraser et al patent in combination with Clearwater under 35 USC § 103.

Applicant respectfully requests entry of the amendment and that the application be passed to issue.

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Hogan & Hartson LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 918-8228

Respectfully submitted,


Ira J. Schaefer
Reg. No. 26,802